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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 RAMON JOHN MENCHACA,)
08 Plaintiff,) CASE NO. C13-2190-RSM-MAT
09 v.)
10 CAROLYN W. COLVIN, Acting) REPORT AND RECOMMENDATION
Commissioner of Social Security,) RE: SOCIAL SECURITY
11 Defendant.) DISABILITY APPEAL
12 _____)

13 Plaintiff Ramon Menchaca proceeds through counsel in his appeal of a final decision
14 of the Commissioner of the Social Security Administration (Commissioner). The
15 Commissioner denied plaintiff's applications for Supplemental Security Income (SSI) after a
16 hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision,
17 the administrative record (AR), and all memoranda of record, the Court recommends that this
18 matter be AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1986.¹ He attended high school until the 9th grade and
21 _____

22 ¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic

01 received his General Equivalency Degree in 2010. (AR 221, 473.) Plaintiff has past relevant
02 work as a fast food worker and hand packer. (AR 33.)

03 Plaintiff filed an application for SSI on April 5, 2012, alleging disability beginning
04 January 1, 2011. (AR 21, 190-98.) His application was denied at the initial level and on
05 reconsideration. (AR 79-86, 90-96.)

06 On May 16, 2013, ALJ Stephanie Martz held a hearing, taking testimony from a
07 vocational expert. (AR 41-53.) Plaintiff's attorney was present at the hearing; however,
08 plaintiff failed to appear. (AR 41-53.) The ALJ found that plaintiff did not show good cause
09 for missing his hearing, and on June 13, 2013, the ALJ issued a decision finding plaintiff not
10 disabled. (AR 18-40.)

11 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
12 on October 16, 2013 (AR 1-6), making the ALJ's decision the final decision of the
13 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

14 **JURISDICTION**

15 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
16 405(g).

17 **DISCUSSION**

18 The Commissioner follows a five-step sequential evaluation process for determining
19 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
20 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had

21
22 Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 not engaged in substantial gainful activity since April 5, 2012, the application date. At step
02 two, it must be determined whether a claimant suffers from a severe impairment. The ALJ
03 found severe plaintiff's anxiety disorder, bipolar disorder, personality disorder, intermittent
04 explosive disorder vs. impulse control disorder, learning disorder, status post thumb fracture,
05 lumbar spondylosis, and lumbar degenerative disc disease. Step three asks whether a
06 claimant's impairments meet or equal a listed impairment. The ALJ found that plaintiff's
07 impairments did not meet or equal the criteria of a listed impairment.

08 If a claimant's impairments do not meet or equal a listing, the Commissioner must
09 assess residual functional capacity (RFC) and determine at step four whether the claimant
10 demonstrated an inability to perform past relevant work. The ALJ found plaintiff had the
11 RFC to perform light work as defined in 20 C.F.R. § 416.967(b), except that he could
12 frequently climb ramps and stairs and occasionally climb ladders, ropes, and scaffolds.
13 Plaintiff was found able to frequently balance, stoop, kneel, crouch, and crawl, and
14 occasionally finger with his right dominant hand and that he must avoid concentrated
15 exposure to hazards. Plaintiff was also found able to understand, remember, and carryout
16 simple routine tasks with occasional contact with coworkers and superficial, incidental
17 interaction with the general public. With that assessment, the ALJ found plaintiff unable to
18 perform his past relevant work as a fast food worker and hand packer.

19 If a claimant demonstrates an inability to perform past relevant work or has no past
20 relevant work, the burden shifts to the Commissioner to demonstrate at step five that the
21 claimant retains the capacity to make an adjustment to work that exists in significant levels in
22 the national economy. The ALJ concluded, with the assistance of the VE, that plaintiff could

01 perform other jobs existing in significant levels in the national economy, such as work as a
02 bakery worker, motel cleaner, shipping and receiving weigher, and base filler. The ALJ,
03 therefore, concluded plaintiff was not disabled at any time from the April 5, 2012 application
04 date through the date of the decision.

05 This Court's review of the ALJ's decision is limited to whether the decision is in
06 accordance with the law and the findings supported by substantial evidence in the record as a
07 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
08 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
09 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
10 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
11 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
12 F.3d 947, 954 (9th Cir. 2002).

13 Plaintiff argues the ALJ erred by failing to provide legally sufficient reasons to
14 discredit the opinion of Gordon Hale, M.D., and by failing to give legally sufficient reasons
15 for finding plaintiff's subjective testimony not credible. As a result, plaintiff argues the ALJ
16 erred in assessing plaintiff's RFC and proffered an incomplete hypothetical to the vocational
17 expert. Dkt. 14 at 1. Plaintiff further argues that the ALJ erred in failing to find plaintiff had
18 good cause for missing his hearing. *Id.* He asks that the ALJ's decision be reversed and his
19 claim remanded for further proceedings. The Commissioner argues the ALJ's decision is
20 supported by substantial evidence and based on the correct legal standards and should be
21 affirmed.

22 Medical Opinion Evidence

01 In general, more weight should be given to the opinion of a treating physician than to a
02 non-treating physician, and more weight to the opinion of an examining physician than to a
03 non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not
04 contradicted by another physician, a treating or examining physician's opinion may be
05 rejected only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d
06 1391, 1396 (9th Cir. 1991)). Where contradicted, a treating or examining physician's opinion
07 may not be rejected without "specific and legitimate reasons" supported by substantial
08 evidence in the record for so doing." *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499,
09 502 (9th Cir. 1983)). The ALJ may reject physicians' opinions "by setting out a detailed and
10 thorough summary of the facts and conflicting clinical evidence, stating his interpretation
11 thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing
12 *Magallanes*, 881 F.2d at 751). Rather than merely stating her conclusions, the ALJ "must set
13 forth [her] own interpretations and explain why they, rather than the doctors', are correct." *Id.*
14 (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

15 Gordon Hale, M.D., a non examining physician, reviewed the medical record and
16 issued a medical opinion regarding plaintiff's functional limitations on September 21, 2012.
17 (AR 66-78.) Dr. Hale opined that plaintiff would be limited to lifting twenty pounds
18 occasionally, lifting ten pounds frequently, standing and/or walking for six hours in an eight
19 hour work day, and sitting for six hours in an eight hour work day. (AR 73.) Dr. Hale further
20 opined plaintiff would be limited to occasional climbing of ladders, ropes, and scaffolds;
21 frequent climbing of ramps and stairs; and frequent balancing, stooping, kneeling, crouching,
22 and crawling. (AR 73-74.) Dr. Hale also opined that plaintiff should limit his handling and

01 fingering with his right hand to occasionally. (AR 74.)

02 The ALJ gave Dr. Hale's opinion significant weight finding it consistent with the
03 medical record and plaintiff's activities. (AR 29.) However, the ALJ gave only partial
04 weight to the portion of Dr. Hale's opinion related to plaintiff's ability to handle with his right
05 hand. (AR 30). The ALJ discredited this part of the opinion finding that it was based
06 primarily on plaintiff's subjective testimony, which was properly discredited. *Id.* Plaintiff
07 argues this was not a specific and legitimate reason to discredit Dr. Hale's opinion. Dkt. 14 at
08 7. This Court disagrees.

09 According to the Ninth Circuit, "[an] ALJ may reject a treating physician's opinion if
10 it is based 'to a large extent' on a claimant self-reports that have been properly discounted as
11 incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (*quoting Morgan v.*
12 *Comm'r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999) (*citing Fair v. Bowen*, 885 F.2d
13 597, 605 (9th Cir. 1989)). This situation is distinguishable from one in which the doctor
14 provides his own observations in support of his assessments and opinions. *See Ryan v.*
15 *Comm'r of Soc. Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008) ("an ALJ does not
16 provide clear and convincing reasons for rejecting an examining physician's opinion by
17 questioning the credibility of the patient's complaints where the doctor does not discredit
18 those complaints and supports his ultimate opinion with his own observations"); *see also*
19 *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir. 2001).

20 Here, while Dr. Hale reviewed medical records prior to rendering his opinion, none of
21 these records contained information regarding plaintiff's thumb impairment. The records did
22 not contain any imaging of plaintiff's thumb nor did they indicate plaintiff received treatment

01 for this condition or even discussed this impairment with his doctors. The only information
02 available to Dr. Hale regarding this impairment came from plaintiff's own statements. Thus,
03 Dr. Hale's opined limitations related to plaintiff's thumb impairment could only have been
04 based on plaintiff's subjective complaints. As will be discussed later, the ALJ did not err in
05 discrediting plaintiff's testimony. Therefore, the ALJ properly rejected Dr. Hale's opinion as
06 based in large part on plaintiff's discredited subjective complaints. *See Tommasetti v. Astrue*,
07 533 F.3d at 1041.

08 Credibility

09 Absent evidence of malingering, an ALJ must provide clear and convincing reasons to
10 reject a claimant's testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)
11 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). *See also Vertigan v. Halter*,
12 260 F.3d 1044, 1049 (9th Cir. 2001). "General findings are insufficient; rather, the ALJ must
13 identify what testimony is not credible and what evidence undermines the claimant's
14 complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "In weighing a claimant's
15 credibility, the ALJ may consider his reputation for truthfulness, inconsistencies either in his
16 testimony or between his testimony and his conduct, his daily activities, his work record, and
17 testimony from physicians and third parties concerning the nature, severity, and effect of the
18 symptoms of which he complains." *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
19 1997).

20 The ALJ in this case found that while plaintiff's medically determinable impairments
21 could reasonably be expected to cause some of the alleged symptoms, his statements
22 concerning the intensity, persistence, and limiting effects of those symptoms were not entirely

01 credible. (AR 27.) Contrary to plaintiff's contention, the ALJ provided a number of clear and
02 convincing reasons in support of this conclusion.

03 A. Treatment Records Inconsistent with Alleged Symptoms

04 The ALJ first discredited plaintiff's credibility finding it inconsistent with the medical
05 records. (AR 27, 28.) A determination that a claimant's complaints are "inconsistent with
06 clinical observations" can satisfy the clear and convincing requirement. *Regennitter v.*
07 *Commissioner of SSA*, 166 F.3d 1294, 1297 (9th Cir. 1998). However, a claimant's pain
08 testimony may not be rejected "*solely* because the degree of pain alleged is not supported by
09 objective medical evidence." *Orteza v. Shalala*, 50 F.3d 748, 749-50 (9th Cir. 1995) (quoting
10 *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.1991) (*en banc*)) (emphasis added); *see*
11 *also Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir.2001); *Fair v. Bowen*, 885 F.2d 597, 601
12 (9th Cir. 1989). The same is true with respect to a claimant's other subjective complaints. *See*
13 *Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995) (finding that while holding in *Bunnell*
14 was couched in terms of subjective complaints of pain, its reasoning extended to claimant's
15 non-pain complaints as well).

16 The ALJ gave several examples to show that plaintiff's subjective complaints were
17 unsupported by the medical record. (AR 27, 28.) The ALJ noted that the record did not show
18 plaintiff ever discussed his hand impairment with his doctors. (AR 27). The ALJ also noted
19 that plaintiff generally had a normal range of motion and gait, when examined. (AR 27.). In
20 regards to plaintiff's mental impairments, the ALJ noted that plaintiff was observed to be alert
21 and cooperative with a normal mood, attention span, and ability to concentrate. (AR 28.) The
22 ALJ reasonably found plaintiff's subjective complaints unsupported by the medical evidence.

01 While this alone is not a sufficient reason to discount plaintiff's credibility, the ALJ did
02 provide other clear and convincing reasons. *See Orteza*, 50 F.3d at 749-50.

03 B. Plaintiff's Activities

04 The ALJ also discredited plaintiff's credibility finding his subjective statements
05 inconsistent with his daily activities. (AR 28.) To determine whether a claimant's symptom
06 testimony is credible, the ALJ may consider his or her daily activities. *Smolen v. Chater*, 80
07 F.3d 1273, 1284 (9th Cir. 1996). The Ninth Circuit has recognized "two grounds for using
08 daily activities to form the basis of an adverse credibility determination," first, they can "meet
09 the threshold for transferable work skills," second, they can "contradict his other testimony."
10 *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

11 The ALJ laid out in detail the many activities she found inconsistent with plaintiff's
12 reported disabling impairments. The ALJ noted plaintiff's ability to take walks and sit on an
13 airplane despite his allegations of difficulty walking and difficulty sitting for prolonged
14 periods of time. (AR 28.) The ALJ also noted plaintiff's ability to ride a scooter, push a
15 family member on the merry-go-round, and do laundry despite his allegations of constant
16 back pain. *Id.* In regards to plaintiff's alleged mental impairments, the ALJ noted plaintiff's
17 ability to set reminders on his phone, prepare food, follow written instructions, and babysit on
18 a daily basis. *Id.* Finally, the ALJ found plaintiff's ability to ride in an airplane, go grocery
19 shopping, take public transportation, spend time at the park, and interact with friends, family,
20 and his significant other, as inconsistent with plaintiff's alleged social limitations. *Id.*

21 The ALJ provided ample evidence to support her finding that plaintiff's activities were
22 inconsistent with the alleged severity of his symptoms. Plaintiff, at best, argues in favor of a

01 contrary interpretation of the evidence without demonstrating the ALJ's interpretation of the
02 record was not rational. It is not the job of the court to reweigh the evidence. If the evidence
03 "is susceptible to more than one rational interpretation," including one that supports the
04 decision of the Commissioner, the Commissioner's conclusion "must be upheld." *Thomas v.*
05 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citing *Morgan v. Comm'r of Soc. Sec. Admin.*,
06 169 F.3d 595, 599, 601 (9th Cir. 1999)). The ALJ's interpretation of the record was equally
07 rational to that suggested by plaintiff. As such, the inconsistency with plaintiff's daily
08 activities was a clear and convincing reason to discredit plaintiff's credibility.

09 C. Improvement with Treatment

10 The ALJ further discredited plaintiff's testimony regarding his mental impairment
11 because the record showed plaintiff's impairment improved while taking medication. (AR
12 28.) The ALJ may discount a claimant's credibility on the basis of medical improvement. *See*
13 *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999); *Tidwell v.*
14 *Apfel*, 161 F.3d 599, 601 (9th Cir. 1998). The ALJ cited to the record which showed plaintiff
15 reported that with his medication he had improvement in his irritability and that he was able
16 to hang out with friends more frequently. (AR 28, 374.) Plaintiff provides no argument
17 against the ALJ's reasoning. The Court finds that plaintiff's improvement with medication
18 was a clear and convincing reason to discount plaintiff's credibility. For this reason, and for
19 all of the reasons stated above, the ALJ's credibility determination should be affirmed.

20 RFC Assessment and Vocational Hypothetical

21 Plaintiff's assignments of error relating to the RFC assessment and vocational
22 hypothetical question are premised on the argument that the ALJ failed to properly assess the

01 opinion of Dr. Hale and failed to properly assess the credibility of plaintiff's testimony.
02 Failing to establish error in these areas, plaintiff's remaining assignments of error also fail.

03 Good Cause for Failure to Appear at Hearing

04 Plaintiff argued in his opening brief that the ALJ erred by failing to find plaintiff had
05 good cause for missing his hearing and by failing to reschedule a hearing at which plaintiff
06 could testify. Dkt. 14 at 1. However, as pointed out by defendant, this argument was based
07 on a misreading of the Social Security Administration's Hearings, Appeals, and Litigation
08 Law Manual (HALLEX), thus the plaintiff withdrew this assignment of error in his reply
09 brief. Dkt. 18 at 3; Dkt. 19 at 1. Therefore, the Court will not address this issue further.

10 CONCLUSION

11 For the reasons set forth above, the Court recommends this matter should be
12 AFFIRMED.

13 DATED this 14th day of October, 2014.

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15 Mary Alice Theiler
16 Chief United States Magistrate Judge
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